

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION**

**PORTIA BROWN AND
LYRIC FORTNEY, A MINOR
BY AND THROUGH HER MOTHER
AND NEXT FRIEND, TECHAKA BROWN**

PLAINTIFFS

VS.

CIVIL ACTION NO. 2:08-CV-27

**TESCO PROPERTIES, INC. D/B/A ROSEWOOD
APARTMENTS, ET AL**

DEFENDANT

MOTION TO REMAND

COME NOW the Plaintiffs, Portia Brown and Lyric Fortney, a Minor, by and through her mother and next friend Techaka Brown, and file this their Motion to Remand, stating as follows:

I.

The instant claim accrued on the Defendant's apartment complex when a cedar step on the stairwell collapsed underneath her weight while she carried the minor child on her hip. Brown and Fortney sustained minor bodily injuries and incurred medical expenses in the amount of \$4,000 and \$3,000 respectively. Plaintiff's most recently extended an offer of settlement in the amount of \$23,000 for the claim of Brown, and \$20,000 for the claim of Fortney.

II.

Plaintiff's amended complaint was improvidently removed from the Circuit Court of the First Judicial District of Hinds County, Mississippi, pursuant to 28 U.S.C. § 1332. The complaint seeks unspecified compensatory damages for bodily injuries. Plaintiff's bodily injuries are not characterized as severe or disabling. Prior to removal, Plaintiffs had neither submitted a demand for settlement in excess of \$75,000, nor did either indicate that she intended to seek damages in excess

of the jurisdictional minimum. Defendant did propound any form of jurisdictional discovery concerning the amount in controversy to Plaintiffs before removal. Since it is not facially apparent from the face of the complaint that the amount in controversy exceeds \$75,000, and Defendant cannot identify "other paper" that is necessary to establish jurisdiction, this action should be remanded to the state court forum from which it was removed without cause.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests that this matter be remanded to the Circuit Court of the First Judicial District of Hinds County, Mississippi, with all costs to the Defendant.

Respectfully this submitted, the 12th day of May, 2008.

PORTIA BROWN, ET AL

BY: /s/ Yancy B. Burns
Yancy B. Burns, Esq. (MSB# 99128)

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CERTIFICATE OF SERVICE

I, Yancy B. Burns, attorney for the Plaintiff, do hereby certify that I have this day served a true and correct copy of the foregoing to the following attorney:

R. Brittain Virden, Esq.
Campbell DeLong
P.O. Box 1856
Greenville, MS 38702-01856

THIS, the 12th day of May, 2008.

/s/ Yancy B. Burns
Yancy B. Burns